



COPY

Patent

Customer No.: 26308

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ralph et al.

Attorney Docket No.: 1759.17239-FOR

Serial No.: 10/001,937

Examiner: A. Ramana

Filed: 25 October 2001

Group Art Unit: 3732

Title: Systems and Methods for Reducing Fractured Bone Using a Fracture Reduction Cannula

PETITION FOR AN UNINTENTIONALLY DELAYED BENEFIT CLAIM
PURSUANT TO 37 C.F.R. §1.78(a)(3)

Office of Petitions
Box DAC
Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Applicant requests to amend the benefit claim under 35 U.S.C. §120 of the above-noted application as follows in marked-up form:

This application is a continuation-in-part of copending United States Application Serial No. 10/617,976, filed July 11, 2003, entitled "Systems and Methods for Placing Materials into Bone," which is a divisional of United States Application Serial No. 09/804,107, filed March 12, 2001, now U.S. Patent No. 6,613,054, which is divisional of United States Application Serial no. 09/134,323, filed August 14, 1998, now U.S. Patent No. 6,241,734. This application also claims the benefit of United States provisional application serial No. 60/243,194 filed 25 October 2000.

Applicant states that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of 37 C.F.R. §1.78 and the date the claim was filed was unintentional.

Applicant hereby petitions for acceptance of the unintentionally delayed benefit claim.

The requisite fee under 37 C.F.R. §1.17(t) is submitted herewith.

Respectfully Submitted,

By Patricia A. Limbach
Patricia A. Limbach
Registration No. 50,295

RYAN KROMHOLZ & MANION, S.C.
Post Office Box 26618
Milwaukee, Wisconsin 53226
(262) 783 - 1300
21 May 2004
Customer No.: 26308
Kyphon/17239-FOR/040521 Petition Under 37 C.F.R. 1.78(a)(2)

Enclosure: Return postcard



Customer No.: 26308

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of: Ralph et al. Attorney Docket No.: 1759.17239-FOR
Serial No.: 10/001,937 Examiner: A. Ramana
Filed: 25 October 2001 Group Art Unit: 3732
For: Systems and Methods for Reducing Fractured Bone Using a Fracture Reduction Cannula

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

**NOTIFICATION OF LOSS OF ENTITLEMENT
TO SMALL ENTITY STATUS**

1. Applicant asserted small entity status in this application on 25 October 2001.
2. Applicant hereby notifies the Office, in accordance with the requirements of 37 CFR 1.27(g)(2) that it no longer has status as a small entity.

Patricia A. Limbach
SIGNATURE OF ATTORNEY

Reg. No.: 50,295

Patricia A. Limbach
TYPE OR PRINT NAME OF ATTORNEY

Tel. No.: (262) 783 - 1300

RYAN KROMHOLZ & MANION, S.C.

Customer No.: 26308

P.O. ADDRESS

Post Office Box 26618

Milwaukee, Wisconsin 53226

CERTIFICATE OF MAILING (37 CFR 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United State Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed as follows: Mail Stop AF, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

Date: 21 May 2004

Linda S. Wenzel

Type or print name of person mailing paper

Linda S. Wenzel
(Signature of person mailing paper)



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

MAY 11, 1999

PTAS

RYAN KROMHOLZ & MANION, S.C.
DANIEL D. RYAN
633 WEST WISCONSIN AVENUE
MILWAUKEE, WI 53203



100966720A

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 02/08/1999

REEL/FRAME: 9757/0854
NUMBER OF PAGES: 5

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
SCRIBNER, ROBERT

DOC DATE: 01/21/1999

ASSIGNOR:
REO, MICHAEL

DOC DATE: 01/21/1999

ASSIGNOR:
REILEY, MARK

DOC DATE: 01/20/1999

ASSIGNOR:
BOUCHER, RYAN

DOC DATE: 01/21/1999

ASSIGNEE:
KYPHON INC.
3110 CORONADO DRIVE
SANTA CLARA, CALIFORNIA 95054

SERIAL NUMBER: 09134323
PATENT NUMBER:

FILING DATE: 08/11/1998
ISSUE DATE:

RECEIVED
MAY 20 1999

RYAN KROMHOLZ & MANION S.C.

9757/0854 PAGE 2

SHARON LATIMER, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

MAY 24 2004

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02-19-1999



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U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

100966720

Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Robert Scribner; Michael Reo; Mark Reiley; Ryan Boucher

2. Name and address of receiving party(ies)

Name: KYPHON INC.

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

Internal Address: _____

3. Nature of conveyance: *MRU 2-8-99*☒ Assignment☐ Merger☐ Security Agreement☐ Change of Name☐ Other _____

Street Address: _____

3110 CORONADO DRIVE

Execution Date: 1/21/99;1/21/99;1/20/99;1/21/99

City: SANTA CLARA State: CA ZIP: 95054

Additional name(s) & address(es) attached: ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

09/134,323 (08/14/1998)

B. Patent No.(s)

2/12/1999 RMAGAT 00000100 062360 09134323

FC:581

40.00 DP

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Daniel D. Ryan

Internal Address: _____

Ryan Kromholz & Manion, S.C.

Street Address: _____

633 West Wisconsin Avenue

City Milwaukee State: WI ZIP: 53203

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

06-2360

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Daniel D. Ryan

Name of Person Signing

Signature

2/2/99

Date

Total number of pages including cover sheet, attachments, and document: ☐

ASSIGNMENT

WHEREAS, Robert M. Scribner of Los Altos, California; Michael L. Reo of Redwood City, California; Mark A. Reiley of Piedmont, California; and Ryan Boucher of San Francisco, California (hereinafter referred to as ASSIGNORS), have invented and own a certain invention entitled Systems and Methods for Placing Materials into Bone for which application for Letters Patent of the United States has been executed on even date herewith (attorney's Docket No. 1759.15100);

WHEREAS, Kyphon Inc. of Santa Clara, California (hereinafter referred to as ASSIGNEE), is desirous of acquiring the entire interest in, to and under said invention and in, to and under Letters Patent or similar legal protection to be obtained therefor in the United States and in any and all foreign countries;

NOW THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that in consideration of the payment of ASSIGNEE to ASSIGNORS of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration, ASSIGNORS hereby sell, assign and transfer to ASSIGNEE the full and exclusive right, title and interest to said invention in the United States and its territorial possessions and in all foreign countries and to all Letters Patent or similar legal protection in the United States and its territorial possessions and in any and all foreign countries to be obtained for said invention by said application or any continuation, division, renewal, substitute or reissue thereof or any legal equivalent thereof in a foreign country for the full term or terms for which the same may be granted.

ASSIGNORS hereby covenant that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment and sale;

ASSIGNORS further covenant that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said application, said invention and said Letters Patent and legal equivalents in foreign countries as may be known and accessible to ASSIGNORS and will testify as to the same in any interference or litigation related thereto and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letters Patent and said equivalents thereof in any foreign country which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS THEREOF, I have hereunto set hand and seal this 21 day of

January, 1998.


Robert M. Scribner

State of _____)
County of _____) ss.

Personally appeared before me this _____ day of _____, 1998,
the above named Robert M. Scribner, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires,

(Seal)

* * * * *

IN WITNESS THEREOF, I have hereunto set hand and seal this 21 day
of JANUARY, 1998.

Michael L. Reo
Michael L. Reo

State of _____)
County of _____) ss.

Personally appeared before me this _____ day of _____, 1998,
the above named Michael L. Reo, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires

(Seal)

● ● ● ● ●

IN WITNESS THEREOF, I have hereunto set hand and seal this 20 day
of January, 1998.
Mark A. Reiley
Mark A. Reiley

State of Cal)
County of Alameda) ss.

Personally appeared before me this _____ day of _____, 1998,
the above named Mark A. Reiley, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires _____

(Seal)

.....

IN WITNESS THEREOF, I have hereunto set hand and seal this _____ day
of _____, 1998.

Ryan Boucher

State of _____)
County of _____) ss.

Personally appeared before me this _____ day of _____, 1998,
the above named Ryan Boucher, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires _____

(Seal)

.....

IN WITNESS THEREOF, I have hereunto set hand and seal this _____ day
of _____, 1998.

Mark A. Reiley

State of _____)
County of _____) ss.

Personally appeared before me this _____ day of _____, 1998.
the above named Mark A. Reiley, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires.

(Seal)

• • • • •

IN WITNESS THEREOF, I have hereunto set hand and seal this 21 day
of January, 1998.

Ryan Boucher

State of _____)
County of _____) ss.

Personally appeared before me this _____ day of _____, 1998,
the above named Ryan Boucher, to me known to be the person who executed the foregoing
Assignment and acknowledged the same as his free act and deed.

Notary Public
My commission expires.

(Seal)

● ● ● ● ●



MAY 16, 2002

PTAS

Commissioner for Trademarks
Arlington, VA 22202-3513
www.uspto.gov

RYAN KROMHOLZ & MANION, S.C.
DANIEL D. RYAN
P.O. BOX 26618
MILWAUKEE, WI 53226



102029094A

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RECORDATION DATE: 03/15/2002

REEL/FRAME: 012696/0876
NUMBER OF PAGES: 5

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

RALPH, CHRISTOPHER R.

DOC DATE: 02/20/2002

ASSIGNOR:

LAYNE, RICHARD W.

DOC DATE: 02/25/2002

ASSIGNOR:

SAND, PAUL M.

DOC DATE: 02/26/2002

ASSIGNOR:

SCRIBNER, ROBERT M.

DOC DATE: 02/27/2002

ASSIGNOR:

REILEY, MARK A.

DOC DATE: 02/28/2002

ASSIGNEE:

KYPHON INC.
1350 BORDEAUX DRIVE
SUNNYVALE, CALIFORNIA 94089

012696/0876 PAGE 2

SERIAL NUMBER: 10001937
PATENT NUMBER:

FILING DATE: 10/25/2001
ISSUE DATE:

JOANN STEWART, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

03-25-2002

No.: 1759.17239-FOR

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office



102029094

Tab settings → → →

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Christopher R. Ralph
Richard W. Layne
Paul M. Sand
Robert M. Scribner
Mark A. Reiley

3/15/02

Additional names(s) of conveying party(ies)

☐ Yes ☒ No

2. Name and address of receiving party(ies):

Name: Kyphon Inc.

Internal Address: _____

Street Address: 1350 Bordeaux Drive

City: Sunnyvale State: CA ZIP: 94089

3. Nature of conveyance:

☒ Assignment

☐ Merger

☐ Security Agreement

☐ Change of Name

☐ Other _____

Execution Date: 20,25,26,27,28 February 2002

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent numbers(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

B. Patent No.(s)

10/001,937

BEST AVAILABLE COPY

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Daniel D. Ryan

Internal Address: Ryan Kromholz & Manion, S.C.

03/20/2002 5DENB0B1 00000063 10001937

06 FC:581

40.00 DP

Street Address: P.O. Box 26618

City: Milwaukee State: WI ZIP: 53226

6. Total number of applications and patents involved:

1

7. Total fee (37 CFR 3.41):.....\$ 40.00

☒ Enclosed - Any excess or insufficiency should be credited or debited to deposit account

☐ Authorized to be charged to deposit account

8. Deposit account number:

06-2360

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Daniel D. Ryan

Name of Person Signing

Signature

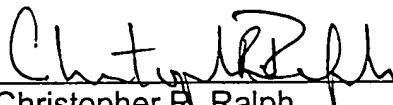
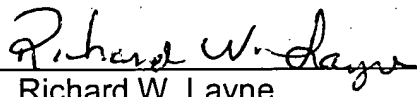
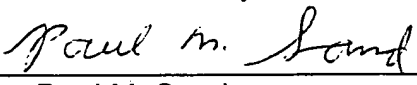
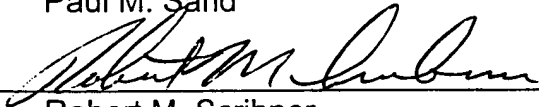
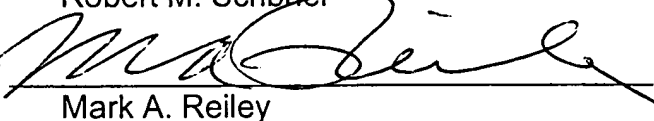
7 March 2002

Date

Total number of pages including cover sheet, attachments, and document: 1

ASSIGNMENT

In consideration of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is acknowledged, we, Christopher R. Ralph, Richard W. Layne, Paul M. Sand, Robert M. Scribner and Mark A. Reiley, being the lawful owners, hereby sell and assign to Kyphon Inc., its successors and assigns, the entire right, title and interest throughout the world in our invention in Systems and Methods for Reducing Fractured Bone Using a Fracture Reduction Cannula, as described in application Serial No. 10/001,937 filed 25 October 2001 for United States patent, and in this and any and all U.S.A. and other patent applications and patents thereon, and in all rights of priority thereto.

By <u></u>	Date <u>02/28/02</u>
Christopher R. Ralph	
By <u></u>	Date <u>2/27/02</u>
Richard W. Layne	
By <u></u>	Date <u>26-Feb-02</u>
Paul M. Sand	
By <u></u>	Date <u>2/20/02</u>
Robert M. Scribner	
By <u></u>	Date <u>2/25/02</u>
Mark A. Reiley	

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

} ss.

On February 28, 2002, before me, Marjorie L. Jarvis, Notary Public

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

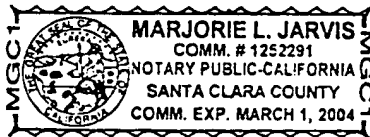
personally appeared Christopher R. Ralph

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) (s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Marjorie L. Jarvis
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Assignment (USSN 10/001,937)

Document Date: _____ Number of Pages: 1

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

SS.

On February 27, 2002, before me, Marjorie L. Jarvis, Notary Public

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

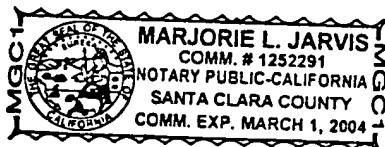
personally appeared Richard W. Layne

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies); and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Marjorie L. Jarvis
Signature of Notary Public

OPTIONAL

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Description of Attached Document

Title or Type of Document: Assignment (USSN 10/001,937)

Document Date: _____ Number of Pages: 1

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Clara

} ss.

On February 26, 2002, before me, Marjorie L. Jarvis, Notary Public

Date

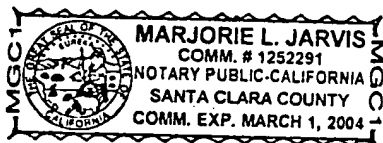
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Paul M. Sand

Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she they executed the same in his her their authorized capacity(ies), and that by his her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Marjorie L. Jarvis
Signature of Notary Public

OPTIONAL

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Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here